IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 953 OF 2001
IN
L.A.R. NO. 91 OF 1993

The State of Maharashtra,]
(Through the Special Land Acquisition Officer,]
Kalprakalpa Roha (for Morbe Dam), Roha -]
Raigad.] .. Appellant (Ori. Opponent)

Versus

Shri Balu Bapu Palande, adult,]
R/o. Varose-Wadi, Tal. Khalapur, Dist. Raigad.] .. Respondent (Ori. Claimant)

WITH

FIRST APPEAL NO. 954 OF 2001
IN
L.A.R. NO. 87 OF 1993

The State of Maharashtra,]
(Through the Special Land Acquisition Officer,]
Kalprakalpa Roha (for Morbe Dam), Roha -]
Raigad.] .. Appellant (Ori. Opponent)

Versus

Shri Baban Shankar Belose, adult,]
R/o. Varose-Wadi, Tal. Khalapur, Dist. Raigad.] .. Respondent (Ori. Claimant)

WITH

FIRST APPEAL NO. 955 OF 2001

IN
L.A.R. NO. 88 OF 1993

The State of Maharashtra,]
(Through the Special Land Acquisition Officer,]
Kalprakalpa Roha (for Morbe Dam), Roha -]
Raigad.] .. Appellant (Ori. Opponent)

Versus

Shri Vithal Gangaram Tawale, adult,]
R/o. Varose-Wadi, Tal. Khalapur, Dist. Raigad.] .. Respondent (Ori. Claimant)

WITH

FIRST APPEAL NO. 956 OF 2001
IN
L.A.R. NO. 89 OF 1993

The State of Maharashtra,]
(Through the Special Land Acquisition Officer,]
Kalprakalpa Roha (for Morbe Dam), Roha -]
Raigad.] .. Appellant (Ori. Opponent)

Versus

Shri Dhondu Dama Tawale, (deceased),]
1. Shri Mukund Dhondu Tawale (heir)]
R/o. Varose-Wadi, Tal. Khalapur, Dist. Raigad.] .. Respondent (Ori. Claimant)

AND

FIRST APPEAL NO. 957 OF 2001
IN
L.A.R. NO. 90 OF 1993

The State of Maharashtra,]
(Through the Special Land Acquisition Officer,]
Kalprakalpa Roha (for Morbe Dam), Roha -]
Raigad.] .. Appellant (Ori. Opponent)

Versus

Shri Krishnaji Gajanan Belose, adult,]
R/o. Varose-Wadi, Tal. Khalapur, Dist. Raigad.] .. Respondent (Ori. Claimant)

Mr. K.K. Tated, AGP, for the appellants.

Mr. C.S. Gavnekar with Mr. A.C. Gavnekar and Mr. G.S. Hiranandani, Advocate for respondents.

ALONGWITH

FIRST APPEAL NO. 165 OF 2002

Shri Balu Bapu Palande, adult,]
resident of Varose-Wadi, Taluka Khalapur,]
District Raigad.] .. Appellant (Ori. Claimant)

Versus

The Special Land Acquisition Officer,]
Kal-Prakalpa, Roha (for Morbe Dam), Roha,]
District Raigad.] .. Respondent (Ori. Respondent)

WITH

FIRST APPEAL NO. 166 OF 2002

Shri Baban Shankar Belose, adult,]
resident of Varose-Wadi, Taluka Khalapur,]

District Raigad.] .. Appellant (Ori. Claimant)

Versus

The Special Land Acquisition Officer,]
Kal-Prakalpa, Roha (for Morbe Dam), Roha,]
District Raigad.] .. Respondent (Ori. Respondent)

WITH

FIRST APPEAL NO. 167 OF 2002

Shri Dhondu Dama Tawale, (deceased),]
1. Shri Mukund Dhondu Tawale (heir)]
resident of Varose-Wadi, Taluka Khalapur,]
District Raigad.] .. Appellant (Ori. Claimant)

Versus

The Special Land Acquisition Officer,]
Kal-Prakalpa, Roha (for Morbe Dam), Roha,]
District Raigad.] .. Respondent (Ori. Respondent)

AND

FIRST APPEAL NO. 168 OF 2002

Shri Krishnaji Gajanan Belose, adult,]
resident of Varose-Wadi, Taluka Khalapur,]
District Raigad.] .. Appellant (Ori. Claimant)

Versus

The Special Land Acquisition Officer,]
Kal-Prakalpa, Roha (for Morbe Dam), Roha,]
District Raigad.] .. Respondent (Ori. Respondent)

Mr. C.G. Gavnekar with A.C. Gavnekar and Mr. G.S. Hiranandani, Advocate for the appellants.

Mr. K.K. Tated, AGP, for the respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 2ND SEPTEMBER, 2004.

ORAL JUDGMENT : *[Per F.I. Rebello, J.]*

1. All these Appeals are directed against the common Award dated 31st March 1999 passed by the Reference Court i.e. Civil Judge, Senior Division, at Panvel. By the said impugned Award, the Reference Court has been pleased to fix market value of the acquired land @ Rs.60,000/- per acre. The lands have been acquired for Morbe Dam Project. The Notification under Section 4 was published on 22/1/1990. The Award by the Land Acquisition Officer is dated 23rd April 1993. The Land Acquisition Officer fixed market value at the rate of Rs.5/- per square meter based on agricultural assessment i.e. the produce of the land. The evidence on record would indicate that one crop was being raised from the land. By the impugned Award, the Reference Court has discarded assessment based on

agricultural produce and held that the land had non agricultural potential, in other words, building potential and based on that, has awarded compensation at the rate of Rs.60,000/- per square meter.

2. At the hearing of this Appeal, on behalf of the State, learned AGP points out that the land had been acquired for the purpose of Dam Project. The lands, at the time of Notification, were put to agricultural use. There was hardly any industrial, commercial or residential activity in the locality and as such, it could not be said that the land had building potential. In these circumstances, it is pointed out that the market value fixed by the Special Land Acquisition Officer would be proper market value and the Appeal filed by the State be allowed. It was also urged on behalf of the respondent-State that the Reference was made beyond the period of limitation and consequently, the Reference Court ought to have rejected the Reference.

On the other hand, on behalf of the claimants who have also filed Appeals, it is contended that the market value at the rate of Rs.60,000/- per acre is on the lower side and that the price of the land of the land ought to be at least Rs.1,40,000/- per acre i.e. at the rate of Rs.35/- per square meter. It is pointed out

that the appellants have been able to prove through their witness Mahadu Sitaram Prabhalkar that a plot of land admeasuring 30000 square feet situated at Chowk, Maniwali, bearing Survey No.49/3 was sold for consideration was Rs.18,000/- to one Shri Krishna Jambivale and Balaram Vaipute. That Sale Deed is Exhibit-31. The land is about 5 miles away from the acquired lands which are situated in village Varose. It is also pointed out that the learned Reference Court has taken note of the fact that for the lands acquired for the same Project from village Hatnoli, an Award has been passed in Land Acquisition Reference No.115 of 1993 in the case of ***Shri Gopal Bhaurao Deshmukh Vs. Special Land Acquisition Officer*** decided on 30th April 1998, whereby the SLAO has fixed the market value at the rate of Rs.95,000/- per acre. It is further pointed out that they have examined an expert witness Manohar Gopal Vaidya, Valuer, who has given the topography of the land and its distance from various other Projects, including the Patalganga Industrial Project, distance from the railway lines, highway and other aspects of the mater. The lands, therefore, it is pointed out, have a potential for non agricultural purposes and in these circumstances, the Reference Court was right in assessing the potential of the lands based on non agricultural purposes. It is pointed out, considering all the evidence, that the price of Rs.15/- per square meter or Rs.60,000/- per acre, as fixed by the Reference Court, is on the lower

side and it ought to be at least at the rate of Rs.35/- per square meter.

3. At the hearing of this Appeal, by the consent of the parties, we are taking on record Award passed by a Division Bench of this Court in respect of village Wahal in First Appeal No. 80 of 1993 in the case of ***Dilip Gopal Naik & Ors. Vs. State of Maharashtra & Ors.*** and other appeals, decided on 13th June 2001, wherein in respect of Notification issued on 3rd February 1970, in respect of a land situated at a distance of 9 kilometers from Panvel Town, a Division Bench of this Court was pleased to fix the market value at the rate of Rs.5/- per square meter.

4. With the above, we shall now first consider the material on record to find out as to whether the Award of the Reference Court can be sustained or, as contended by the State in its Appeals, the market value should be decreased or, as contended by the claimants in their Appeals, that the market value should be enhanced.

5. The evidence, apart from the evidence of the claimants, otherwise is common inasmuch as the claimants have examined Mahadu Sitaram Prabhalkar

and have proved Exhibit-31 i.e. the Sale Deed earlier adverted to and, as an expert, Manohar Gopal Vaidya. We will consider the evidence of Balu Bapu Palande who is the appellant in First Appeal No. 165 of 2002. From his evidence what emerges is that the lands were adjoining village Varose where paddy and vegetables were grown. There was a road Varose-Wadi to Chowk touching the acquired lands. There is electric supply and water supply to village Varose. The Bombay-Pune Highway is at a distance of 4 to 5 furloughs from the acquired lands. The market place of village Chowk is also at a similar distance where there are educational facilities available prior to the Notification. Karjat Industrial area and Railway Station is at a distance of 5 to 6 kilometers. Khopoli Industrial Estate is at a distance of 9 to 10 kilometers. There are Petrol Pumps situated on both sides of the highway at Chowk. About 300 companies are functioning at a distance of 7 to 8 kilometers. He also relied on the Sale Deed Exhibit- 31. Village Varose is at a distance of 2 furloughs from the highway. He denied the suggestion that there was no construction near the vicinity of the acquired lands and within a perusary of 5 kilometers. He also denied that there was no approach road to the acquired lands. Claimants' witness No.2 Mahadu Sitaram Prabhalkar has deposed to the Sale Deed, which is marked as Exhibit-31. He admits that his land was non agricultural land and for 3000 square feet, he had received Rs.18,000/- as the sale

price. The next witness examined is Manohar Gopal Vaidya. In his evidence, it has come on record that there was no approach road to the acquired land. He has further deposed that the lands are at a distance of 225 meters from the highway and Panvel-Karjat Road is at a distance of 300 meters from the acquired lands. Patalganga Industrial Estate is at a distance of 4 kilometers. Chowk S.T. Stand is at a distance of 1 kilometer. Karjat Railway Station is at a distance of 7 kilometers and Karjat Gaon is at a distance of 7 kilometers. The acquired lands, though paddy lands, were at a plain level and having development potential due to infrastructural facilities and that Panvel-Karjat road is passing through the acquired lands. We are not adverting to his fixing the market value based on acquisition of land from village Roadpali considering that these lands are at a distance of 22 kilometers from the acquired lands. In fact, the price fixed by this expert valuer at Rs.500/- per square meter is far fetched. It has also come in his evidence that he visited the acquired land on 17th March 1996 whereas the Notification under Section 4 was published in the year 1990. The evidence of this witness really speaking, therefore, for fixing the market value is of no consequence. His evidence can be considered only be in respect of finding out the infrastructural facilities and the other development that has taken place. Even then, he has deposed based on his knowledge of the year 1996 and not of the year 1990, but

considering the evidence that has come through the claimants as regards the infrastructural facilities at the time of Section 4 Notification, we are considering his evidence to that limited extent and as no evidence to the contrary has been led on behalf of the State.

6. From the evidence which has come on record, it is clear that around the land and close by, there is the Pune-Mumbai Highway; there is also the Panvel-Karjat Road, all within 500 meters from the acquired lands. There are two Industrial Estates, one at Patalganga and the other at Khopoli, which are between 5 to 6 kilometers and 9 to 10 kilometers respectively. Witnesses' claimant, in his evidence, has also pointed out that there are about 300 companies functioning and having their Industrial Units around those areas. The village Varose, which is adjacent to the acquired land had electric and water supply from the very beginning. On behalf of the appellant-State no witness has been examined and only suggestion by way of denials have been put to the claimants witnesses. Considering the availability of land, water, roads and further that Industrial activities were going on, we do not see any reason as to why we should disagree with the finding of the learned Reference Court that the land had non agricultural

potentialities. We, therefore, concur with the finding recorded that the land had building potential and as such, could be valued based on building potential. It is no doubt true that on behalf of the appellant-State, learned AGP had contended that the land was acquired for the purpose of a Dam. The public purpose for which the land is acquired is immaterial. What is material is the potential of the land. We are of the opinion that the learned Reference Court, on the material available and which we ourselves have considered was right in holding that the land had non agricultural potential.

6. Having said so, the question is what should be the market value of the acquired land. The learned Reference Court has proceeded, solely based on the evidence of Mahadu Sitaram Prabhalkar and Exhibit-31. The very fact that only one Sale Deed has been proved and that too of a village about 10 kilometers away, would indicate that the lands at the time of Notification were not much in demand. The learned Reference Court also relied on the Award in Land Acquisition Reference No. 115 of 1993 where, apart from this Sale Deed, it appears that some other sale instances were also produced. It is not possible from the said order passed in the Reference to exactly locate those other lands and/or their distance from the acquired lands. In First Appeal No.757 of 2003 between ***The State of Maharashtra Vs. Smt. K.K. Mhatre & Ors.,*** and another Appeal decided on 31st

March 2004, which we have taken on record by consent, a Division Bench of this Court, relying on another Division Bench in respect of acquisition at New Bombay Project by Notification of 3rd February 1970, had taken the Pune-Mumbai Highway as an indicator for the purpose of fixing the market value of the lands. In those cases, market value considering the highway, was fixed at the rate of Rs.25/- to Rs.21/-. Roadpalli village is a part of the acquisition which was done for CIDCO in 1970. In the instant case, we find that the highway is at a distance of about 500 meters from the acquired lands. Having said so, what is next important is the nature of the land. From the evidence of the expert witness Vaidya, what has come on record is that the land was at plain level and, therefore, not needed further development insofar as leveling of the land, was required. We have also noted the Award passed in First Appeal No. 80 of 1993 in respect of Village Wahal, which was at a distance of about 9 kilometers from Panvel, which Town is close to Mumbai and wherein the price of the acquired land, considering its location, the facilities available, was fixed at Rs.5/- per square meter by Notification of 3rd February 1970. From the Suit land, Panvel is about 17 kilometers. Expert witness Vaidya had sought to rely on the Award made in the Reference in respect of village Roadpali, which was at a distance of 22 kilometers. Though the highway is an important indicator, what is also important would be its nearness from Mumbai.

Though the claimant had deposited that there is a road next to the acquired lands, from the evidence of Vaidya it is clear that, in fact, there was no road. This fact will also have to be taken into consideration in working out the market value of the land. Considering the facts and circumstances and taking the awards in the references, more so the market value of the village Wahal, when in 1970 the price was fixed at Rs.5/- per square meter, it could safely be said after considering all statutory deductions which naturally will have to be taken into account, that the market value of the land could be fixed at Rs. 2.50 per square meter as of 3rd February 1970. Considering 10% yearly increase we think it proper that the market value of the land be fixed at Rs.12/- per square meter. If that be the case, the market value per acre would be Rs.48,000/-. Considering that the Notification is of the year 1990, claimants-appellants would be entitled to all consequential benefits, including compensation under Section 23(1)(A) of the Land Acquisition Act. In the light of that, the following Order:

O R D E R :

(a) First Appeal Nos.953 of 2001, 954 of 2001, 955 of 2001, 956 of 2001 and 957 of 2001 are partly allowed, inasmuch as, the market value of the land is

reduced from Rs.60,000/- per acre to Rs.48,000/- per acre.

(b) First Appeal Nos.165 of 2002, 166 of 2002, 167 of 2002 and 168 of 2002 filed by the claimants-appellants are dismissed.

(c) The Reference Court is directed to make payment to the claimants-appellants based on the Award as modified by the judgment of this Court, and without any security.

(c) In the circumstances of the case, there shall be no order as to costs.

Issuance of certified copy expedited.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]